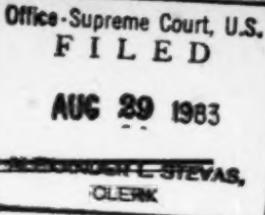


83-609

No.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALPHA BLAIR, a widow,
and RICHARD BLAIR
Petitioners,

vs.

LARRY BOULGER,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
STATE OF NORTH DAKOTA**

RICHARD E. BLAIR
1020 First Avenue South
Fargo, North Dakota 58103
(701) 293-8932

For Petitioner Richard E. Blair

QUESTIONS PRESENTED FOR REVIEW

- I. Whether a defendant is entitled to have an attorney who is given adequate time to prepare a defense or must be subjected to unfair treatment of instantaneous trial, by a hostile court, in violation of his due-process rights of the Fourteenth Amendment of the Constitution of the United States of America.
- II. Whether the owner of real estate property is entitled to exercise the option to cancel a Contract for Deed as provided in the contract, or must be subjected to economic injury by lack of possession due to prejudicial violation of the prohibitions against impairing the obligation of contracts of Article I, Section 10, Paragraph 1 of the Constitution of the United States of America.

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OPINION BELOW

No opinion was given by the Supreme Court State of North Dakota in denying the Petition for Rehearing. The order is printed in the Appendix hereto, p. A-1. (No. 10, 299)

JURISDICTION

The order of the Supreme Court State of North Dakota in denying the timely Petition for Rehearing was entered on July 21, 1983. Decision of Supreme Court State of North Dakota, June 30, 1983.

Memorandum Opinion, Findings of Fact, Conclusions of Law, dated January 29, 1982. Motion to Amend and Affidavits to Amend Memorandum Opinion, Findings of Fact, Conclusions of Law, February 26, 1982. Memorandum Opinion, Findings of Fact, Conclusions of Law, and Order for Judgment, June 15, 1982. Entry of Judgment, August 25, 1982. Amicus Curiae - Fargo Broadcasting Co. Inc. (KVNJ-TV, Fargo) November 30, 1981.

The jurisdiction of this Court is invoked under 28 U.S.C. Paragraph 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States of America Constitution, Amendment XIV, Section I:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States of America Constitution Article I, Section 10, Paragraph 1:

No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts or grant any title of nobility.

STATEMENT OF THE CASE

Alpha Blair, 75, a widow, and Richard E. Blair, 50, of Fargo, North Dakota, were defendants in a counter-suit brought by Larry Boulger, 32, of Fargo. Boulger was represented by his lawyer-brother, 34. The Blairs had to rely on non-family persons to represent them as legal counsel.

Richard E. Blair appealed from a North Dakota District Court judgment awarding Boulger \$2,500 compensatory damages and \$5,000 exemplary damages for alleging that Blair had intentionally interfered with contractual relations between Boulger and Alpha Blair.

The Supreme Court State of North Dakota affirmed the judgment and modified some interest charges.

Following the Supreme Court State of North Dakota decision, Blair's attorney notified him of the decision. Blair inquired why part of the transcript was missing in which his trial attorney had notified the court the trial was being held under protest. The trial attorney had later accepted a position out of state, and Blair's appeal attorney was unaware of the protest fact.

The District Court opinion listed the wrong date of the trial, the transcript was missing the Opening Day Proceedings and the Supreme Court State of North Dakota in its review of the record had not noticed the transcript was incomplete and that the trial had been held under protest.

Blair then petitioned for a rehearing citing the events leading to the forced trial held under protest by his trial attorney, the missing transcript proceedings and why the Supreme Court State of North Dakota review of the record was incomplete, due to the incomplete transcript of the vital Opening Day Proceedings.

The Petition for a Rehearing was denied without comment July 21, 1983 at unreported time.

REASON RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. The Supreme Court State of North Dakota, a state court of last resort, in denying a Petition for Rehearing by the appellant Erred and has decided an important question of Federal Law which is in violation of Section I of the Fourteenth Amendment of the Constitution of the United States of America and should be settled by this Court.

The first inquiry in any suit brought under Federal Law is "whether the plaintiff has been deprived of a right 'secured by the Constitution and laws'." *Baker v. McCollan*, 443 U.S. 137, 140 (1979).

The Supreme Court State of North Dakota in denying a Petition for Rehearing has made a departure from one of the most basic principles of American citizens in a right to a fair trial. This is a violation of the due process rights of the United States Constitution if there ever was one.

The North Dakota District Court judge had in pre-trial events suddenly ordered that Richard E. Blair had to have a separate attorney in place of one attorney for both Blair and Alpha Blair. This directive from the judge came on late Friday morning with the trial scheduled early Tuesday morning. Monday was a legal holiday in observance of the birthdays of President George Washington and President Abraham Lincoln.

Blair, an honorable man, dutifully scurried about attempting to secure an attorney that Friday afternoon and on the following day, Saturday. Monday, the legal holiday, the lawyers offices were closed. Approximately fifteen minutes before the trial, on Tuesday, Blair - by the grace of God - obtained a

lawyer. The attorney arrived breathlessly in time for the trial and requested a delay in order to prepare himself for the case, since he was not prepared for instantaneous trial. The judge banged down his gavel, and said the trial would begin immediately.

Blair's attorney immediately notified the court the trial was being held under protest. The outcome of the trial should not have been surprising since Blair's attorney was not prepared, having had no time to prepare, and was under a great and impossible handicap. While zero time was provided for Blair's trial attorney to prepare a defense, Boulger's lawyer-brother reported he had spent 40 hours in preparing for the trial. Is this Democracy? The Petitioners contend it most certainly is not under the Constitution of the United States of America.

These circumstances were brought to the attention of the Supreme Court State of North Dakota in the Petition for Re-hearing, once Blair's appeal attorney was made aware the trial was forced and held under protest.

It is this absolute violation of the due process rights of the Fourteenth Amendment of the Constitution of the United States that is relied on for the allowance of the Writ.

It should also be pointed out that the Supreme Court of the United States has long served as a clearing house for interpreting the Constitution as a limitation upon state governments in the sphere of human relations and private property interests.

In the case of *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 4 L. Ed. 579 (1819) this Court noted the need for the "end to be legitimate, let it be within the scope of the Constitution." The action of the North Dakota Courts in denying a defense attorney time to prepare, is neither legitimate nor within the scope of the Constitution.

The case of *Marbury v. Madison*, 1 Cranch, 137-2 L. Ed. 60 (1802), in which the decision was written by Chief Justice John Marshall, is significant also for expounding the constitutional theory of judicial review. It is certainly applicable in this case of the petitioner, who is fighting for his constitutional rights of equality in due process as an American citizen against an arbitrary and capricious act inflicted by a hostile North Dakota trial court.

The Error of the Supreme Court State of North Dakota by its denial of the Petition for Rehearing in deciding an important question of Federal Law involving the due process rights of the Fourteenth Amendment of the Constitution of the United States, is so substantial that it requires plenary consideration by this Court.

The Federal questions sought to be reviewed involving violations of the Constitutional rights of the Petitioner were first brought up in North Dakota District Court when Blair's attorney protested being forced into trial without preparation.

The Blairs, following the issuance of a Memorandum Opinion by the District Judge, made a motion to Amend Findings of Fact and Conclusion of Law of the Memorandum Opinion and submitted an Affidavit in support of the motion to Amend the Findings of Fact which touched upon Constitutional provisions of Federal Law. In all instances the District Court denied the protests and endeavors to Amend the Findings of Fact and Conclusions of Law. In the Appellate court the Federal questions were raised on the Petition for Rehearing.

Due to the total lack of preparation by Blair's trial attorney, vital evidence was not discovered and presented at the counter-claim trial.

Newly-discovered evidence that was not available at the trial has since come to light which indicates that Boulger had embarked upon a whole course of conduct which was designed to intimidate and pressure Blair to forego his Constitutional rights. This evidence presented to the Supreme Court State of North Dakota in the Petition for Rehearing, must change the entire conclusion of that Court, if it is admitted in evidence.

The decision of the Supreme Court State of North Dakota should, therefore, be reversed and there should be a dismissal of the plaintiff's claims against Blair. Whatever claim the situation in this case might give rise to under state law, it gives rise to no claim under the Constitution of the United States of America in view of the due process violations of trial court, and the forced trial without allowing adequate preparation for Blair's attorney. The whole situation was caused by arbitrary and capricious action which resulted in lack of a prepared counsel and a hostile court attitude.

II. The Supreme Court State of North Dakota, a state court of last resort, in denying a Petition for Rehearing by the appellant Erred and has decided an important question of Federal Law which is in violation of Article 1, Section 10, Paragraph 1 of the Constitution of the United States of America and should be settled by this Court.

It was explicitly brought to the attention of the Supreme Court State of North Dakota in the Petition for Rehearing that a Contract for Deed between Alpha Blair and Larry Boulger had been cancelled before the start of the counter-claim trial. The option for Alpha Blair to cancel the contract was specifically provided in the contract.

The appeal attorney for the Blairs pointed out to the Court that Boulger had concealed the breach of contract well past commencement of the lawsuit. In fact, Boulger, in pre-trial interrogatory questions, had wrongfully denied any breach when he knew fully that he had breached the contract. The Blairs have paid taxes on the property for the past five years.

The failure of the Supreme Court State of North Dakota to note the cancellation of the Contract for Deed in the Petition for Rehearing impairs the obligation of Boulger to obey the Contract and upon the demand of Alpha Blair, which has been made in writing to Boulger, to "quietly and peaceably to surrender to her possession of said premises."

This is in direct violation of Article 1, Section 10, Paragraph 1 of the Constitution of the United States of America, which prohibits any state from impairing the obligation of contracts. It is also in direct violation of Article I, Section 16 of the Constitution of North Dakota, which prohibits the impairing the obligation of contracts.

The Constitution of North Dakota in Article I, Section 3, states "The state of North Dakota is an inseparable part of the American union and the constitution of the United States is the supreme law of the land."

Therefore, the Supreme Court State of North Dakota in denying the Petition for Rehearing, under the special circumstances of this case, has decided an important question of Federal Law which is in violation of the Constitution of the United States.

The provisions in the Constitution of the United States relating to prohibitions impairing the obligations of contracts was first brought to the attention of the trial court in an Amicus Curiae brief filed by Fargo Broadcasting Co. Inc. (KVNJ-TV, Fargo) before the issuance of the Memorandum Opinion. It was also raised by the Blairs following the issuance of the Memorandum Opinion in a Motion and Affidavit to Amend the Findings of Fact, Conclusions of Law. In both instances, the trial court judge denied the issues of Federal Law pertaining to the Constitution of the United States of America.

The Federal question raised as to whether the owner of real estate property is entitled to exercise the option to cancel a Contract for Deed as provided in the contract, or must be subjected to economic injury by lack of possession due to prejudicial violation of the prohibitions against impairing the obligation of contracts of Article I, Section 10, Paragraph 1 of the Constitution of the United States is so substantial that it requires plenary consideration by this Court.

CONCLUSION

The denial of equal treatment and due process rights in the North Dakota Courts is repugnant to the law of the land. It is unpatriotic and un-American. It is the exact opposite of what this Great Nation has fought against throughout its illustrious history including World War I and World War II. The proceedings in the North Dakota Courts resulting in the violation of the Fourteenth Amendment to the Constitution

of the United States, and the violation of Article I, Section 10, Paragraph 1 of the Constitution of the United States, should be reviewed by this Court.

Wherefore, Your petitioner prays that a Writ of Certiorari be issued under the seal of this Court, directed to the Supreme Court State of North Dakota, to the end that this cause may be reviewed and determined by this Court; that the decree of the said Supreme Court State of North Dakota be reversed by this Court; and that he may be granted such other and further relief as to this Court may seem meet and proper.

Respectfully submitted,

RICHARD E. BLAIR
1020 First Avenue South
Fargo, North Dakota 58103

For Petitioner Richard E. Blair

APPENDIX

STATE OF NORTH DAKOTA
Supreme Court
Bismarck

Clerk of the Supreme Court
Mrs. Luella Dunn

July 21, 1983

Mr. Michael C. O'Neal
Attorney at Law
322 N. 5th St.
Fargo, ND 58102

RE: Blair v. Boulger
No. 10, 299

Dear Mr. O'Neal:

The Supreme Court has today entered an order denying the petition for rehearing in this case.

In accordance with Rule 41(a), NDRAppP, the mandate of the Supreme Court will be forwarded to the Clerk of the District Court after the expiration of seven days.

Sincerely yours,

Luella Dunn
Clerk
Supreme Court

LD:cf:tb

cc: Mr. John V. Boulger
The Honorable Norman J. Backes

STATE OF NORTH DAKOTA

Supreme Court

Bismarck

Clerk of the Supreme Court

Mrs. Luella Dunn

July 29, 1983

Mr. Richard E. Blair
1020 First Ave. S.
Fargo, ND 58103

Re: Blair v. Boulger
No. 10, 299

Dear Mr. Blair:

Your Motion for A Stay of Mandate was received and filed in my office.

I have considered your Motion and have granted a 30 day Stay of Mandate under the provisions of Rule 41 (b) NDRAAppP. This action is taken under the provisions of Administrative Rule 5.

Sincerely yours,

Luella Dunn
Clerk of the Supreme Court

LD:cf

cc: Mr. Michael C. O'Neil
Mr. John V. Boulger
The Honorable Norman J. Backes
The Honorable Gerald W. VandeWalle
The Honorable Ralph J. Erickstad